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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,003	12/14/2000	Mark S. Young	812495-000140 (10.220)	1404
64553 7590 11/19/2009 Nixon Peabody LLP (F5 PATENTS) Gunnar G. Leinberg 1100 Clinton Square Rochester, NY 14604			EXAMINER LOONAN, ERIC T	
			ART UNIT 2189	PAPER NUMBER
			MAIL DATE 11/19/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/738,003	<b>Applicant(s)</b> YOUNG, MARK S.	
	<b>Examiner</b> ERIC LOONAN	<b>Art Unit</b> 2189	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-12 and 14-18 is/are allowed.
- 6) ☒ Claim(s) 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This Office Action is based on application 09/738,003 originally filed 14 December 2000. **Claims 1-2, 4-12, and 14-20** are currently pending and have been considered below.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 19 and 20** are rejected under 35 U.S.C. 102(b) as being anticipated by Shibuya (US Patent 6,185,647).

3. **Claim 19:** A method for data transfer arbitration comprising: monitoring volume of data in data transfers for a plurality of devices (Col 4, Lines 10-14); and assigning a priority to each device corresponding to the volume of data in data transfers generated by the device (Col 4, Lines 14-18).

4. **Claim 20:** An apparatus for data transfer arbitration comprising: means for monitoring volume of data in data transfers for a plurality of devices (Col 4, Lines 10-14); and means for assigning a priority to each device corresponding to the volume of data in data transfers generated by the device (Col 4, Lines 14-18).

***Allowable Subject Matter***

5. **Claims 1, 2, 4-12, and 14-18** are allowed.

***Response to Arguments***

Applicant's remarks, submitted 5 August 2009 in response to Office Action mailed 20 February 2009, have been fully considered below.

Claim Rejections under 35 U.S.C. § 102 (Claims 19 and 20)

Applicant argues that the prior art of record fails to disclose "assigning a priority to each device corresponding to the volume of data in data transfers generated by the device". The applicant asserts that applicant's claimed 'volume of data' limitation is not equivalent to Shibuya's 'access frequency' as set forth by the rejection of record.

The Examiner has fully considered applicant's remarks; however, is not persuaded by them and retains the rejection of record. The Examiner relies on applicant's disclosure to define what is meant by 'volume of data'. Applicant's specification does not contain the word 'volume', but does state "In one embodiment, the arbitration unit uses statistics registers to count the number of data transfers through the crossbar. Statistic registers provide an indication by which the arbitration unit can dynamically adjust the priorities assigned to devices based on the bandwidth demand requested by each device" (Page 7, Lines 17-20). The Examiner maintains that applicant's claimed 'volume of data' limitation, based on the definition of 'volume of data' set forth in applicant's disclosure, is sufficiently broad whereby the prior art of record discloses applicant's claimed invention. Furthermore, the prioritization scheme

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of claims 19-20 fails to claim how the prioritization is assigned. In applicant's remarks, the Applicant implies that prioritization is based on "an amount of data". In response, the Examiner provides the following non-patent literature document that discloses prioritization schemes based on data size: "Resource Allocation Schemes for Non-Real-Time Bursty Traffic in Wireless ATM Networks"; Section 4.3).

Claim Rejections under 35 U.S.C. § 103 (Claims 1, 2, 4-8, 12, 14-18)

Applicant has amended Claim 1 to incorporate the allowable subject matter of Claim 13. The Examiner withdraws the rejection to Claim 1 (and subsequent dependent claims).

***Conclusion***

The prior art made of record on form PTO-892 and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 C.F.R. § 1.111(c) to consider these references fully when responding to this action. The documents cited therein teach similar prioritization schemes.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC LOONAN whose telephone number is (571)272-6994. The examiner can normally be reached on Monday-Friday, 7:30am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Reginald Bragdon can be reached on (571) 272-4204. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric Loonan/  
Examiner, Art Unit 2189

/Reginald G. Bragdon/  
Supervisory Patent Examiner, Art Unit 2189